

MEMORANDUM

TO: Lester Snow  
Steve Ritchie  
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FROM: Michael G. Heaton *Heaton*

DATE: July 9, 1998

SUBJECT: Assurances *Governance*

I have been giving some thought to what we mean now when we talk about the assurances package. This may be perfectly clear and self-evident to all of you, but I find myself a little bit confused. This memo is an effort to clarify my own thinking and to identify a couple of areas where perhaps we can do some productive work in trying to get the stakeholders together.

Assurances Generally

Up until a couple of months ago I had thought about the assurances package as an agreement or a set of agreements which described the deal points which interested parties (agencies and stakeholder groups) would need to resolve in order to support the preferred alternative for the CALFED program.

In the work plan prepared back in March, I think, we described the assurances package as having several major elements:

1. program wide assurances;
2. component specific assurances;
3. a permitting process agreement;
4. a staging and linkage plan;
5. a conservation strategy providing regulatory stability (i.e, no surprises);
6. a management and governance plan for ERP;
7. a program oversight plan with stakeholder involvement; and
8. a contingency response process.

These major assurance elements and the financing principles would be described in a document which could be thought of as a Principles Agreement. This agreement would provide the political and legal foundation for the adoption of the preferred alternative and the implementation of the program.

It seemed logical to me to think of the PEIR/EIS as the description of the program alternatives and their impacts; and that the Implementation Plan or Strategy would describe how the preferred alternative would actually be implemented over time; and that the Assurances and Financing Packages would provide the political, legal and financial "glue" that held the deal together.

I am not sure that what I have described above is still valid, although I think that somewhere in the program or in program documents, we will need to deal with these issues. As I understand the concepts expressed in the discussion paper entitled Developing a Draft Preferred Program Alternative, dated July 8, assurances appear to be imbedded or integrated into the implementation plan, rather than standing outside it. This probably makes sense, and we have always said that to some extent the manner of implementation will itself provide some level of assurance, but this approach makes it a little harder to visualize what we mean now by an assurances "package".

It seems to me that what we are saying is that the assurance tools are not separable from program implementation. For example, the notion of a Stage I (7 yr) implementation period, with linkage among program actions, is itself an assurance mechanism. It is a way of assuring that one component does not get ahead of the other, and that all parties "get better together". Similarly, the concept of conditional decision making (e.g., no isolated facility unless certain conditions exist) presumably is an assurance of some value to some interests.

What this suggests to me is that the way in which we explain or describe the assurances "package" may need to be rethought. Rather than thinking of assurances as something that is outside of or in addition to the implementation plan, perhaps we need to explain how the implementation plan itself provides the assurances that interested parties need in order to support the program.

In other words, rather than thinking or talking about an assurances package, we would develop a discussion paper that would be incorporated into the revised Phase 2 Report (or its equivalent) that explains how the various aspects of the Implementation Plan (.e.g, component actions; staging and linkage; conservation strategy; permitting and approval process; contingency response process; management and governance) collectively provide the necessary assurances that the program will unfold as agreed.

CALFED may still conclude that at some point the acceptance of these concepts, and the political/legal/financial commitment of interested parties should be memorialized in some type of Principles Agreement, but this would not be essential.

#### Specific Assurances Issues

Whatever the approach taken for describing the assurances "package", there are certain issues, resolution of which is probably essential to providing the assurances stakeholders want. Certainly one of the key issues is the question of regulatory stability, or "no surprises" for water users. We generally talk about this as an ESA issue, but it is perhaps broader than that.

It seems to me that "no surprises" is really a question of CVP/SWP operations criteria, both interim and long term, and how the projects might be constrained by ESA, Clean Water Act, CVPIA, or some other force.

These questions intersect with the issues about ERP management and governance specifically, CALFED program oversight generally, and stakeholder involvement at both these levels. While there are serious questions about which existing agency or new entity should implement the ERP, who should run the monitoring programs, who should make adaptive management decisions, etc., the real area of contention is who should bear the risk of environmental or species specific problems: the CALFED program (meaning the government and/or the public generally) or the water users. This question cannot be separated from the question about CVP/SWP operating criteria. If the water users continue to bear the risks, in a regulatory driven situation, water supply will continue to be uncertain due to changes in operating rules. If the risk is shifted to the public (through the program as its surrogate), operating criteria and thus water supply will be more stable, and impacts, if any, will at least be compensated.

While there are a number of other assurance issues still up in the air, it seems to me that this is probably the major assurance issue facing the program right now. It does not appear that the conservation strategy, as it is currently constructed, is going to respond to the water users' concept of regulatory certainty. The environmental groups clearly do not yet agree that water users can be protected without jeopardizing ecosystem protections and restoration efforts.

One way we could focus discussion here is to develop a proposal for ERP management and governance, including some ideas on program oversight and stakeholder involvement. We could include in this discussion some ideas on the relationship between ERP implementation and project operations/water supply, in particular how the ERP could be implemented in a way that gives water users some level of regulatory protection (the "almost no surprises" level of protection) based on a certain level of resources and management authority available to the eco manager, e.g., money and water. In other words, could we lay out the broad parameters of the basic deal: water users agree that ERP gets this much money and water, and maybe agree also to a cap on exports, in exchange for a particular level of protection. More water and money and less exports produces a higher level of protection and vice versa.

While Dave has not reviewed this memo, he and I have discussed this approach generally and would like to discuss it further with you fairly soon. If we are going to try to produce some kind of assurances document in the next couple of months, we need to get some "policy direction".

cc: Dave  
Eugenia